Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 7 JUNE 13, 1973 No. 24

This issue contains

DEPARTMENT OF THE TREASURY
Bureau of Customs

NOTICE

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Bureau of Customs

(T.D. 73-149)

Bonds

Approval of consolidated aircraft bond (air carrier blanket bond) Customs Form 7605

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 23, 1973.

The following consolidated aircraft bond has been approved as follows:

Name of principal and surety	Date of bond	Date of approval	Filed with district director of customs; amount
Aries Air Cargo International, Inc., 999 No. Sepulveda Blvd., El Segundo, Calif.; Transamerica Ins. Co.	Mar. 7, 1973	Mar. 16, 1973	Los Angeles, Calif.; $100,000

The foregoing principal has not been designated as a carrier of bonded merchandise.

(231.2)

LEONARD LEHMAN,
Assistant Commissioner,
Office of Regulations and Rulings.

(T.D. 73-150)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 24, 1973.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs

Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Aktiebolaget Volvo, 15143 W. 8 Mile Rd., Detroit, Mich.; St. Paul Fire & Marine Ins. Co D 5/7/73	May 17, 1960	May 17, 1960	New York Seaport; $10,000
Anchor Shipping Corp., 20575 Center Ridge Rd., Cleveland, Ohio; St. Paul Fire & Marine Ins. Co.	May 11, 1973	May 16, 1973	Cleveland, Ohio; $20,000.
CTI—Container Transport International Inc. (N.Y. Corp.), One North Broadway, White Plains, N.Y.; Peerless Ins. Co.	May 14, 1973	May 16, 1973	New York Seaport; $10,000
Central Gulf Steamship Corp., New Orleans, La.; The Travelers Indemnity Co. D 3/8/73	Mar. 8, 1965	Mar. 16, 1965	New Orleans, La.; $10,000
Common Container Agency Ltd. (N.Y. Corp.), 61 Broadway, New York, N.Y.; Peerless Ins. Co. D 5/14/73	June 30, 1972	June 30, 1972	New York Seaport; $50,000
Container Transport International Inc., 17 State St., New York, N.Y.; St. Paul Fire & Marine Ins. Co. D 5/7/73	Apr. 4, 1960	Apr. 4, 1960	New York Seaport; $10,000
Heberlein Patent Corp. & its sub. (Heberlein Inc.), 350 Fifth Ave., New York, N.Y.; St. Paul Fire & Marine Ins. Co. D 4/23/73	Oct. 8, 1971	Oct. 12, 1971	Norfolk, Va.; $10,000
Heublein Inc., 151 Commonwealth Dr., Menlo Park, Calif.; Reliance Ins. Co. D 5/4/73	Apr. 28, 1972	May 9, 1972	San Francisco, Calif.; $10,000
Island Equipment Co., Inc., 3300 NW. Yeon Ave., Portland, Ore.; St. Paul Fire & Marine Ins. Co.	May 1, 1973	May 4, 1973	San Francisco, Calif.; $10,000
Kaiser Aluminum & Chemical Corp., 300 Lakeside Dr., Oakland, Calif.; St. Paul Fire & Marine Ins. Co. D 5/14/73	May 12, 1971	May 12, 1971	New Orleans, La.; $10,000
Neris Shipping Co., Inc. (N.Y. Corp.), 55 Liberty St., New York, N.Y.; Federal Ins. Co. D 4/25/73	Apr. 25, 1972	Apr. 26, 1972	New York Seaport; $10,000
Premium Brands Inc. dba Premium Products, 1125 Shafter Ave., San Francisco, Calif.; St. Paul Fire & Marine Ins. Co. D 5/1/73	May 25, 1970	May 25, 1970	San Francisco, Calif.; $10,000
Universal Shipping Co., Inc., Medical Arts Bldg., Puerto de Tierra, P.R.; U.S. Fidelity & Guaranty Co.	Apr. 23, 1973	May 2, 1973	San Juan, P.R.; $10,000
WTC International, Inc. (Del. Corp.), One World Trade Center, New York, N.Y.; Federal Ins. Co.	May 15, 1973	May 15, 1973	New York Seaport; $10,000

(542.113)

LEONARD LEHMAN,
Assistant Commissioner,
Office of Regulations and Rulings.

(T.D. 73-151)

Special classes of merchandise—Customs Regulations amended

Honduras added to the list of countries which restrict the exportation of pre-Columbian monumental and architectural sculpture or murals; section 12.105, Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—BUREAU OF CUSTOMS

PART 12—SPECIAL CLASSES OF MERCHANDISE

On May 2, 1973, an amendment to Part 12 of the Customs Regulations was published in the Federal Register (38 FR 10807), which set forth regulations for the importation into the United States of pre-Columbian monumental and architectural sculpture or murals exported contrary to the laws of the country of origin. Section 12.105 (a) limits the term "pre-Columbian monumental or architectural sculpture or mural" to certain products of Bolivia, British Honduras, Costa Rica, Dominican Republic, El Salvador, Guatemala, Mexico, Panama, Peru, or Venezuela. These countries restrict the exportation of such pre-Columbian art. Information has now been received that the laws of Honduras also restrict the exportation of pre-Columbian monumental and architectural sculpture or murals. Accordingly, section 12.105(a) is amended by inserting "Honduras" after "Guatemala."

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 204, 86 Stat. 1297; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 2094)

The amendment to Part 12 which sets forth the regulations affecting the importation of pre-Columbian monumental and architectural sculpture or murals will become effective on June 1, 1973. Therefore, good cause exists for dispensing with notice and public procedure as contrary to the public interest, and good cause is found for the amendment to become effective on the same date as the earlier published amendment, under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall become effective June 1, 1973. (014.1)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved May 24, 1973:
BRENT F. MOODY,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register June 4, 1973 (38 F.R. 14677)]

(T.D. 73-152)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 22, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

Hong Kong dollar:	*Official*	*Free*
April 16, 1973	$0.1950	No Rate
April 17, 1973	.1950	$0.194316*
April 18, 1973	.1945	.194269*
April 19, 1973	.1942	.194080*
April 20, 1973	.1945	No Rate
April 23, 1973	.1945	No Rate
April 24, 1973	.1942	.194221*
April 25, 1973	.1945	.194221*
April 26, 1973	.1940	.194174*
April 27, 1973	.1938	.193986*

*Certified as nominal.

	Official	*Free*
Iran rial:		
May 7, 1973		$0.0144
May 8, 1973		.0144
May 9, 1973		.0145
May 10, 1973		.0149
May 11, 1973		.0150
Philippine peso:		
For the period May 7 through May 11, 1973, rate of $0.1460.		
Singapore dollar:		
May 7, 1973		$0.4025
May 8, 1973		.4033
May 9, 1973		.4035
May 10, 1973		.4040
May 11, 1973		.4040
Thailand baht (tical):		
May 7, 1973		$0.0481
May 8, 1973		.0480
May 9, 1973		.0484
May 10, 1973		.0485
May 11, 1973		.0487

(342.211)

R. N. MARRA,
Director, Appraisement and Collections Division.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1101)

WAYNE WITHROW CONRAC DIVISION OF GIANNINI CONTROLS CORP. *v.* THE UNITED STATES No. 5482 (—F.2d—)

1. PICTURE TUBE BULBS—TSUS

C.D. 4277, holding certain cathode ray tube bulbs including metal anode buttons to have been properly classified item 547.37, TSUS, as glass envelopes, without fittings, for vacuum tubes, is *affirmed*, for the reasons set forth in the opinion of the Customs Court.

United States Court of Customs and Patent Appeals, May 24, 1973

Appeal from United States Customs Court, C.D. 4277

[Affirmed.]

Glad & Tuttle, attorneys of record, for appellants.
Robert Glenn White, of counsel.
Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Gilbert Lee Sandler* for the United States.

[Oral argument March 27, 1973, by Mr. White and Mr. Sandler]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, *Associate Judges*, and ALMOND, *Senior Judge*.

BALDWIN, Judge.

[1] This appeal is from the decision and judgment of the Customs Court [1] overruling appellants' protest against the classification of merchandise comprising certain television picture tube glass bulbs, imported in 1965, 1966 and 1967, under item 547.37, TSUS, as glass envelopes, without fittings, for vacuum tubes. Appellants claim classification either as parts of cathode ray tubes under item 687.50, TSUS, when imported prior to December 5, 1965, the effective date of the

[1] 67 Cust. Ct. 219, C.D. 4277 (1971).

Tariff Schedules Technical Amendments Act of 1965, Section 2(a), (Pub. L. 89–241) or as parts of other electronic tubes, under item 687.60, TSUS, when imported after the effective date of that amendment.

The pertinent statutory provisions are:

Classified under:

Tariff Schedules of the United States: Schedule 5, Part 3, Subpart C:		
	Glass envelopes (including bulbs and tubes), without fittings, designed for electric lamps, vacuum tubes or other electrical devices:	
* * * * * * *		
Item 547.37	Other	25% ad val.

Claimed under:

Tariff Schedules of the United States: Schedule 6, Part 5:		
	Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezoelectric crystals, all the foregoing and parts thereof:	
Item 687.50	Cathode-ray tubes, and parts thereof	12% ad val.
Tariff Schedules of the United States: Schedule 6, Part 5, as amended by the Tariff Schedules Technical Amendments Act of 1965, T.D. 56511:		
	Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezoelectric crystals; all the foregoing and parts thereof:	
	Television picture tubes	
* * * * * * *		
Item 687.60	Other	12½% ad val.

The merchandise consisted of funnel-shaped glass bulbs used to produce cathode-ray tubes used in the television industry. Fused in the funnel part was a button-sized piece of metal, known as an "anode button" and serving to permit passage of voltage into the cathode ray tube to supply an anode to be provided therein.

The sole issue is whether the imported bulbs were "without fittings" as required by the prefatory heading to Item 547.37.

503-010—73——2

Neither party has alleged that a commercial definition of "fittings" as used here either exists or controls. Nor is there any evidence in the legislative history of Item 547.37 of a particular meaning for the term. The common or dictionary meanings are relatively uninformative as evidenced by the following examples:

> *fitting 1a*: something used in fitting up * * * b: a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water, or gas supply installation or other apparatus—usu. used in pl.; see GAS FITTING, PIPE FITTING * * *. [Webster's Third New International Dictionary (1961).].

> *fitting n.* 1. The act of adjusting or connecting properly. 2. Any article of permanent equipment or adjustment: used generally in the plural, as including fixtures and apparatus; as, gas-*fittings*; steam-*fittings* * * *. [Funk and Wagnalls New Standard Dictionary (1965).].

Each party called one witness. Moreland, for appellant, was an official of the company who had wide experience with cathode ray tubes and their uses. Appellee's witness, Steierman, was manager of the television products division of Owens-Illinois, a large producer of cathode ray tube bulbs, and was thoroughly experienced in his field. Both substantially agreed that completing the imported envelopes into cathode ray tubes included cleaning out the bulb; applying a phosphor to the inner face of the tube; applying a coating of aluminum over the inside; putting a conductive coating from the bottom down through the neck of the tube; assembling the electron gun structure into the neck of the tube and sealing it; and evacuating it.

In response to questioning concerning the anode button and the term "fitting," Moreland testified:

> Q. In the cathode ray tube industry is there anything on a cathode ray tube known as a fitting? A. There are on some tubes more than one thing. This is always called a fitting, this button. Sometimes the tubes have bases which are placed on them later and which is also considered a fitting.
>
> Q. What do you consider a fitting to be in the electronic tube industry? A. A connecting means of some kind.
>
> Q. What function does the button on plaintiff's Exhibit 1 serve? A. It connects, serves as a means of making an electrical connection through the glass of high voltage which is generated external to the tube to get that inside the tube.
>
> Q. Will you tell me, is the purpose of that connection for means of manufacturing or for means of use with a tube after it's completed? A. For the means of use of the tube after it's completed.
>
> Q. Have you had any experience with glass envelopes for electronic tubes other [than] cathode ray tubes? A. No direct experience. I have visited many plants where these tubes of various

types are made and observe them. I have not been actually myself engaged in the manufacture of tubes other than cathode ray tubes.

Q. One last question: in your knowledge, your personal knowledge and experience in the industry is the button on Plaintiff's Exhibit 1 known as a fitting? A. Yes.

Steierman expressed the opinion that the anode button is not "a fitting on the glass bulb," giving as one reason that it is an "intrinsic portion" of the bulb itself. As examples of what he would consider fittings used in cathode ray tubes, the witness referred to a connector on the end of a wire for making contact with the outside of the button, "the kind of plastic cap which is frequently used to protect the lead of the electron gun" and a "glass panel cemented to the front surface to serve * * * the function of protection against implosion." He further testified that the anode button is not known "as a fitting in the glass envelope industry" and that "the term fitting is [not] used as a word of art in the glass envelope industry."

The Customs Court

The Customs Court found the testimony of both witnesses to be "couched in such different tones of unfamiliarity with the term 'fittings' in the glass bulb and cathode-ray tube industries as to be of little weight." It further stated:

> * * * Neither witness was able to identify, definitively or otherwise, the kinds of products that would or would not be considered fittings in the industry producing glass bulbs for cathode-ray tubes and in the industry producing cathode-ray tubes. Furthermore the testimony of the two witnesses is conflicting and, with respect to the term "fittings", the testimony of one witness has the effect of negativing the testimony of the other witness.
>
> * * * * * * *
>
> * * * But something which is integral to production of an article which is a part of the whole (as is the anode metal button fused into the glass bulbs in this case designed for cathode-ray tubes), in our opinion, is not per se a fitting in the tariff sense. The principal parts of a cathode-ray vacuum tube are an electron gun, the bulb, and a luminescent screen. Without evidence or technical expertise, we could not speculate as to whether those parts would be, as to each other, fittings. By the same token we cannot in the case at bar speculate that the metal button is or is not a fitting.

Opinion

We are not convinced that the Customs Court erred in finding that the record here did not rebut the presumptively correct classification of the merchandise by customs officials as glass envelopes "without fittings." In addition to the conflicting testimony referred to by the

court, questioning of both witnesses failed to bring to light the existence of any commercial cathode ray tube bulbs that did not have anode buttons or their metallic equivalent, as a wire providing a similar function. Appellee points out that it is stated that item 547.37 covers "Glass envelopes for * * * television tubes" in Tariff Commission, *Tariff Classification Study* (1960), Schedule 5, Part 3, p. 144. It also notes that both witnesses clearly accepted that cathode ray tubes are used as the principal tubes in television sets. Appellee's ultimate argument on this point is that exclusion of the present tube bulbs from item 547.37 would mean that any commercial cathode ray tube bulb would be similarly excluded, a result it regards as inconsistent with the express intention of Congress.

This argument of appellee is not adequately answered by appellants. It is true that the record does not establish that the same conditions as regards commercial cathode ray tube bulbs necessarily existed in 1960 when the *Classification Study*, supra, was published as well as the later time when the testimony was given. However, the burden is on appellants to overcome the presumption that the classification was wrong and we agree with the Customs Court that it has not done so here.

The judgment of the Customs Court is *affirmed*.

(C.A.D. 1102)

ALUMINUM COMPANY OF AMERICA *v.* THE UNITED STATES No. 5501

(—F. 2d—)

1. CLASSIFICATION OF IMPORTS—FLUOROSPAR—TSUS

   Importer appeals from judgment of Customs Court overruling protest against classification of merchandise under item 522.21 TSUS as fluorspar containing *not over* 97% by weight calcium fluoride and claims merchandise to be properly classifiable under item 522.24 TSUS as containing *over* 97% by weight of calcium fluoride. We reverse.

2. EVIDENCE—PRIMA FACIE CASE

   Appellant submitted evidence of analysis of calcium fluoride content of fluorspar which gave results different from that claimed by the Government, and that evidence was sufficient to establish a *prima facie* case and require the Government to go forward with the proof.

3. EVIDENCE—WEIGHT AND SUFFICIENCY

   The original presumption in favor of the appraisement based on tests performed by customs chemists does not have evidentiary value and may not be weighed against the proofs offered by appellant.

United States Court of Customs and Patent Appeals, May 24, 1973

Appeal from United States Customs Court, C.D. 4303

[Reversed.]

Barnes, Richardson & Colburn, attorneys of record, for appellant. *Joseph Schwartz, James S. O'Kelly,* of counsel.

Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance,* Chief, Customs Section, *James Caffentzis* for the United States.

[Oral argument March 27, 1973, by Mr. Schwartz and Mr. Caffentzis]

Before MARKEY, *Chief Judge,* RICH, BALDWIN, LANE, *Associate Judges,* and ALMOND, *Senior Judge.*

LANE, *Judge.*

[1] This appeal is from the judgment of the United States Customs Court, 67 Cust. Ct. 400, C.D. 4303 (1971) overruling the importer's protest against the classification of certain imported merchandise under item 522.21 TSUS as fluorspar containing *not over* 97% by weight [1] calcium fluoride. The importer claims the merchandise is properly classifiable under item 522.24 TSUS as containing *over* 97% by weight of calcium fluoride. We reverse.

The fluorspar was imported from Spain in shipments entered at Point Comfort, Texas on September 6, 1967, and December 26, 1967. The record reveals that the importer had samples of the fluorspar taken from both shipments, which samples were subdivided into lots, identifiable as "Manisa" and "Allegra" shipments after the importing vessels. Some lots were sent to customs for laboratory analysis, while others were retained by the importer. Classification under 522.24 resulted from the customs laboratory analysis under Customs Method 207.1 [2] reporting that both shipments contained close to, but not over, 97% of calcium fluoride.

In support of its protest, appellant introduced evidence to show the merchandise included over 97% calcium fluoride before being exported and that analyses made of the sample lots in its behalf showed over 97% calcium fluoride. Appellee countered with evidence regarding the customs laboratory tests.

[1] All references hereinafter to percentage of calcium fluoride will be by weight, whether or not so specified.

[2] A method of analysis fully described in a document of record.

The Evidence

Appellant's first witness was Manuel Rodriguez, the director of the mines and mills of the Spanish producer of the imported fluorspar. He testified that fluorspar produced and shipped to the United States is always produced under specifications requiring in excess of 97% calcium fluoride, that the mill employs numerous controls and tests and, if material is found to be running under 97% calcium fluoride, steps are taken to elevate the content before the material leaves the plant.

Walter Frederick, a chemical research technician in appellant's laboratories, testified to analyzing two samples from each shipment following Customs Method 207.1. In the case of the Manisa shipment, Frederick found a calcium fluoride content of 97.32% and 97.48%. His results for the Allegra shipment were 97.79% and 97.25%.

Donald Maryak, a chemist employed by Booth, Garrett & Blair, Inc., commercial chemists, samplers and analysts, testified to analyzing samples of the importation by a modified Bureau of Standards testing method which he considered reliable and which had been used by the firm for over 15 years. His analyses showed a calcium fluoride content of 97.37% for the Allegra shipment and 97.14% for the Manisa shipment. Maryak also analyzed samples using Customs Method 207.1 with the results showing 97.11% for the Manisa shipment and 97.14% for the Allegra shipment.

Russell Eakin, a chemist employed by a company engaged in sampling and analyzing fluorspar and other materials, testified that he personally analyzed samples by Customs Method 207.1 and found a calcium fluoride content of 97.32% for the Allegra shipment and 97.05% for the Manisa shipment.

Paul Pittman and Harold P. Pastor, chemists at the customs laboratory, testified to conducting analyses by Customs Method 207.1. Pittman reported finding 96.58% and 96.51% calcium fluoride in samples from the Manisa shipment and 96.92% and 96.86% in samples from the Allegra shipment. Pastor testified he found 96.72% and 96.60% calcium fluoride for the Manisa shipment and a customs report in evidence shows an average of 96.87% for the Allegra shipment based on four tests, two by Pittman and two by Pastor.

The Customs Court's Decision

The Customs Court observed that the customs chemists used Method 207.1, "a concededly reliable and accurate method when properly conducted," to make their analyses. It further stated that the results they obtained, if not rebutted, are presumed to be correct, citing *Consolidated Cork Co.* v. *United States*, 54 Cust. Ct. 83, C.D.

2512 (1965). It then noted that the customs chemists' description of their tests omitted some steps and deviated from others that are prescribed in Customs Method 207.1. However, it found that appellant had not brought out evidence, either by cross-examination or rebuttal, to enable it to determine whether the omissions or deviations amounted to critical departures from Customs Method 207.1. It then concluded:

> Since we find no evidence which rebuts "the reliability of the government's methods and, in particular, its accuracy in these analyses", *T. H. Gonzalez* v. *United States*, 54 CCPA 104, 107, C.A.D. 918 (1967), the presumption of correctness which attaches to the customs classification has not been overcome, and the protest is overruled.

OPINION

The Customs Court reached its decision on the basis of whether appellant had proved that the analyses made by the customs chemists were erroneous. Finding that it had not, the court ruled that the presumption of correctness attaching to the customs classification was not overcome. We think the court misapplied the reasoning of the *Consolidated Cork* case upon which it relied. In *Consolidated Cork*, the Customs Court correctly set forth the law applicable in cases like the present as follows:

> It is well settled that the methods of weighing, measuring, and testing merchandise used by customs officers and the results obtained are presumed to be correct. *United States* v. *Gage Bros.*, 1 Ct. Cust. Appls. 439, T.D. 31503; *United States* v. *Lozano, Son & Co.*, 6 Ct. Cust. Appls. 281, T.D. 35506; *Draper & Co., Inc.* v. *United States*, 28 Cust. Ct. 136, C.D. 1400. However, this presumption may be rebutted by showing that such methods or results are erroneous. *Sears, Roebuck & Co.* v. *United States*, 3 Ct. Cust. Appls. 447, T.D. 33035; *Gertzen & Co.* v. *United States*, 12 Ct. Cust. Appls. 499, T.D. 40697; *Pastene & Co., Inc.* v. *United States*, 34 Cust. Ct. 52, C.D. 1677. Furthermore, the presumption does not have evidentiary value and may not be weighed against relevant and material proof offered by the plaintiffs. If a *prima facie* case is made out, the presumption is destroyed, and the Government has the burden of going forward with the evidence. *United States* v. *Edson Keith & Co.*, 5 Ct. Cust. Appls. 82, T.D. 34128; *Hawley & Letzerich et al.* v. *United States*, 19 CCPA 47, T.D. 44893; *United States* v. *Magnus, Mabee & Reynard, Inc.* 39 CCPA 1, C.A.D. 455; *James Bute Company* v. *United States*, 33 Cust. Ct. 130, C.D. 1644. [54 Cust. Ct. at 85.]

[2] Appellants here submitted evidence of analysis they applied to the merchandise which gave a result different from that claimed by the Government. That evidence was sufficient to establish a *prima facie* case and require the Government to go forward with the proof.

The Government did so. The issue then comes down to weighing the evidence, recognizing that [3] the original presumption in favor of the appraisement does not have evidentiary value and may not be weighed against the proofs offered by appellant. *Consolidated Cork*, supra; *United States* v. *Magnus, Mabee & Reynard, Inc.*, 39 CCPA 1, C.A.D. 455 (1951).

We think the preponderance of the evidence is in favor of the appellant's position that the imported fluorspar contained over 97% calcium fluoride. The testimony that the producer always produced fluorspar for the United States under specifications calling for such a calcium fluoride content and that fluorspar was a stable material that would not change in that respect during importation is significant evidence in appellant's favor. Also, the analyses on behalf of appellant were five in number for each shipment, were made in three different laboratories by two or three different methods by three different operators, and all showed over 97% calcium fluoride. The Government's analyses showing less than 97% calcium fluoride totaled four on each shipment and all were made in the same laboratories by the same method, although two chemists participated. Moreover, the testimony of the customs chemists indicates that they omitted certain steps described in Customs Method 207.1 and deviated from others.

The Customs Court found that the record offered no basis on which it could "evaluate and weigh the custom chemists' testimony vis-a-vis what they did in following Customs Method 207.1." It stated:

> What we must weigh is whether the customs chemists' testimony of what they did in following Customs Method 207.1 for analyses of fluorspar affected the accuracy of the results stated in the laboratory reports. Plaintiff [appellant] did not cross-examine the customs chemists on any of the alleged omissions or deviations pointed up in its brief, nor is there any testimony that the alleged omissions or deviations constituted critical departures from Customs Method 207.1.
>
> Cross-examination or testimony in rebuttal might have established that critical steps in Customs Method 207.1 were, indeed, omitted or significantly deviated from in the customs analyses. Customs Method 207.1 is a technical set of instructions for sampling fluorspar. The customs chemists described what they did following those instructions. Plaintiff [appellant], if inclined to challenge, could have cross-examined the customs chemists and tested what they testified to, paragraph by paragraph, and line by line, with the instructions set forth in Customs Method 207.1. Plaintiff [appellant], in the absence of a relevant searching cross-examination now asks us to evaluate and weigh technical testimony against technical instructions and determine that the instructions were not followed.

That approach of the Customs Court was clearly erroneous. The testimony of the customs chemists was Government evidence offered in rebuttal of the prima facie case of appellant. It was the responsibility of the Government to show that any deviation from Customs Method 207.1 did not impair the accuracy of the results. While we, like the Customs Court, find the record unconvincing on the question, the deficiency lessens the strength of the Government's case. It does not weaken the case of appellant.

The Government does assert that there were some deviations from Customs Method 207.1 in Frederick's analysis, particularly that he did not try to pass it through an 80 mesh screen. The importance of this seems minimal, however, since the record shows that the imported material was ground to 100 mesh in production. Overall, the absence of any substantial basis for questioning the accuracy of the analyses made on behalf of appellant, along with the uniform results (over 97% calcium fluoride) from analyses in different laboratories by different persons using different methods makes out a persuasive case for appellant.

The protest should have been allowed and the merchandise classified under item 522.24 TSUS. Accordingly, the judgment of the Customs Court is *reversed.*

503-010—73——3

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4424)

M. HOHNER, INC. *v.* UNITED STATES

Memorandum Opinion and Order

Port of New York, Court Nos. 67/76770, 67/77090 and 67/84842
on musical instruments—melodicas

[Judgment for plaintiff.]

(Dated May 15, 1973)

Brooks & Brooks for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

MALETZ, Judge: These three cases involve the dutiable status of wind musical instruments invoiced as "[m]elodicas" that were ex-

ported from West Germany and entered at the port of New York. The imported articles were classified by the government as "[o]ther wind instruments" under item 725.26 or as "[o]ther musical instruments * * * [o]ther" under item 725.52 of the tariff schedules and assessed duty at the rate of 17 percent ad valorem. Plaintiff claims that the imported merchandise is properly classifiable under item 725.18 as mouth organs and thus dutiable at the rate of 14 percent.

In a separate complaint, covering each of these cases, plaintiff alleges that it is the importer of record or consignee of the merchandise involved; that the protests were timely filed; that all the liquidated duties on the imported articles have been paid; that the imported articles consist of melodicas and are the same as the articles which were the subject of *M. Hohner, Inc.* v. *United States*, 63 Cust. Ct. 496, C.D. 3942 (1969);[1] that the imported articles are not properly dutiable under item 725.26 or 725.52 since they are more specifically described in item 725.18 as mouth organs and should be assessed with duty at the rate of 14 percent.

In its answer to each of the complaints, defendant admits each allegation in the complaint, concedes that the imported articles are properly dutiable under item 725.18 as mouth organs and consents to the entry of judgment in each case sustaining the claim under item 725.18 at the rate of duty of 14 percent.

In the light of the foregoing considerations, it is hereby ordered that the claim in each of these actions be, and the same hereby is, sustained, and the importations are held dutiable under item 725.18 at the rate of 14 percent ad valorem. The regional commissioner of customs at the port of New York will reliquidate the entries accordingly.

(C.D. 4425)

KAPLAN PRODUCTS & TEXTILES, INC. *v.* UNITED STATES

Cotton suede fabric—Coated

Cotton suede fabric which was treated with a water-repellent finish that was not visible to the eye held not to be "coated" within the meaning of headnote 2(a) of schedule 3, part 4, subpart C of the tariff schedules and therefore not classifiable, as claimed by plaintiff, under item 356.25.

[1] In that case, the court held that a melodica—which is a wind instrument having multiple free-swinging, pre-tuned reeds and a single blow-hole, and whose notes are selected by movement of the fingers rather than the mouth—was properly classifiable as a mouth organ under item 725.18 rather than under item 725.26 covering other wind instruments.

Court No. 68/15673 and eight others

Port of New York

[Judgment for defendant.]

(Decided May 16, 1973)

Rode & Qualey (*John S. Rode* of counsel) for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

Lamb & Lerch (*David A. Golden* of counsel) as amicus curiae.

MALETZ, Judge: The merchandise involved in this action consists of nine shipments of water-repellent cotton suede fabric with a "Vulca" finish [1] exported from West Germany and entered at the port of New York at various times between June 1966 and June 1968. The fabric was assessed with duty at rates ranging between 14.77 percent and 18.25 percent either under item 322.14 or 322.15 of the tariff schedules, depending upon average yarn number,[2] as—

> Woven fabrics *other than the foregoing*,[3] wholly of cotton:
> Not fancy or figured:
> * * * * * * *
> Colored, whether or not bleached . . . .

or under item 325.15 as—

> Woven fabrics *other than the foregoing*,[4] wholly of cotton:
> * * * * * * *
> Fancy or figured:
> * * * * * * *
> Colored, whether or not bleached . . . .

Plaintiff claims that the merchandise, which has been treated with a water-repellant finish, is thereby "coated" within the meaning of headnote 2(a) of schedule 3, part 4, subpart C, and properly dutiable at either 10 or 9 percent ad valorem, depending upon the date of entry, under item 356.25,[5] which reads as follows:

> Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled, not specially provided for:
> * * * * * * *
> Other:
> Of vegetable fibers----------

[1] The "Vulca" finish, which is not pertinent here, indicates that the fabric, which is imported for use in the shoe industry, has been dyed free of copper and manganese, thus rendering it suitable for use in the production of vulcanized shoes.

[2] The method of computing "average yarn number" is set out in subpart A, headnote 1(b), schedule 3, part 3.

[3] Italicized matter added, Pres. Proc. 3822, Dec. 16, 1967, T.D. 68–9, effective Jan. 1, 1968.

[4] *Ibid.*

[5] Item 356.25, as modified by T.D. 68–9, effective Jan. 1, 1968, reduced the duty assessment from 10 to 9 percent.

Subpart C, headnote 2(a), *supra*, provides that—

> 2. For the purposes of the tariff schedules—
>
> (a) the term "coated or filled", as used with reference to textile fabrics and other textile articles, means that any such fabric or other article has been coated or filled (whether or not impregnated) with gums, starches, pastes, clays, plastics materials, rubber, flock, or other substances, so as to visibly and significantly affect the surface or surfaces thereof otherwise than by change in color, whether or not the color has been changed thereby; [Emphasis in original.]

The parties have agreed that the merchandise is woven fabric and that it is in chief value of a vegetable fiber, specifically cotton. Thus the single issue is whether, as claimed by plaintiff, the imported material is "coated" within the meaning of the foregoing headnote.

The record establishes that untreated cotton suede fabric, whether or not dyed, is "hydrophilic", that is, it readily absorbs water. However, when the fabric, such as that in question here, is treated with a water-repellent finish or coating, it becomes "hydrophobic" or water repellent. Thus, water applied to the treated surface of the imported merchandise will not penetrate the fabric but will form round droplets which can be shaken off. The water-repellent finish was obtained by applying a high molecular weight material (which has a hydrophobic end grouping composed of long chain carbon atoms) to the entire surface of the individual fibers. This material, which is repellent to water, produces the hydrophobic surface on the cotton fibers.

While the hydrophobic effect of the finish is readily apparent when water is sprinkled on the treated suede fabric, the finish itself is transparent. As plaintiff's expert witness explained (R. 41–42):

> * * * In the instance of the water repellent fabric, you cannot see it with the naked eye; you can only see the effect of it. In fact, you cannot see it with a visual microscope. The coating is that finite. It is almost monomolecular in consistence on the surface of the cotton fiber.

Thus, the water-repellent finish used on the fabric in issue leaves the material unchanged in appearance from cotton suede fabric which has not been so treated.[6]

By contrast, other finishes such as rubber or plastic, which are applied to a base fabric to be used, for example in the production of oil-

[6] In this connection, plaintiff's expert witness testified with respect to the merchandise under consideration as follows (R. 49):

> Q. With regard to Plaintiff's Exhibits 2 and 4 [two of the fabrics in question], can you look at the exhibits and tell whether or not they have been coated?
>
> A. No. Only by knowing that it was water repellent treated and then testing with droplets of water can you know that it is coated.

cloth, tracing cloth or window hollands, create a coated surface which is plainly visible on the fabric.[7]

Against this background, plaintiff contends that the effect of the water-repellent finish or coating on the imported fabric surface—changing it from water absorbent to water repellent—as demonstrated by sprinkling water on the cloth, brings the cotton suede fabric within the headnote definition of "coated". We do not agree.

As used with reference to textile fabrics, headnote 2(a) specifies that the "term '*coated or filled*' * * * means that any such fabric * * * has been coated or filled * * * so as to *visibly* and *significantly affect the surface or surfaces* thereof otherwise than by change in color whether or not the color has been changed thereby." [Emphasis added in part.]

As we construe this headnote, whether or not a textile fabric comes within its purview does not depend on the characteristics of the fabric with coating or on its intended use. Thus, the fact that the coating may render the cloth rot proof, vermin proof, water repellent or waterproof is immaterial. Rather, under the criteria set out in the definition, the fabric must be coated with a substance which will "*visibly*" affect the surface of the cloth. In short, if the surface has not been "visibly" affected, the textile is not "coated".

It is quite true that the water-repellent finish has significantly affected the surfaces of the imported cotton suede fibers[8] by making them hydrophobic; however, it is manifest from the testimonal evidence and exhibits that the finish has not *visibly* affected the surface of the fabric—indeed, the "coating" is undetectable not only to the naked eye but also under the microscope. In other words, the fact that the finish creates a water-repellent surface is entirely immaterial in the absence of any visible affect thereon. Accordingly, the imported cloth is not "coated" as that term is defined in headnote 2(a).

Although the language of headnote 2(a) is so clear and unambiguous in its meaning as to obviate any need to resort to legislative history to ascertain the Congressional intent,[9] it is significant that the follow-

[7] Plaintiff's expert witness, questioned as to cloths such as oilcloth, tracing cloth and window hollands, responded as follows (R. 48):

Q. With regard to oilcloth and tracing cloth and window hollands, it is possible to examine them *visually* and see that they have been coated fabrics?

A. That is true. [Emphasis added.]

[8] Whether the coating or finish used on the cotton suede cloth was applied to *individual fibers comprising* the fabric and not to the *surface* of the fabric, as defendant suggests in raising the question whether the surface was coated at all, need not be reached in the light of our finding.

[9] For a review of the legislative history of the claimed provision see *United States* v. *D. H. Grant & Co., Inc.*, 47 CCPA 20, C.A.D. 723 (1959); *Amity Fabrics, Inc.* v. *United States*, 51 Cust. Ct. 97, C.D. 2416 (1963), *appeal dismissed* 51 CCPA 129 (1964); *Amity Fabrics, Inc.* v. *United States*, 62 Cust. Ct. 572, C.D. 3828 (1969), *aff'd* 58 CCPA 73, C.A.D. 1006 (1970).

ing excerpt from the Explanatory Notes to the *Tariff Classification Study*, Schedule 3, November 15, 1960, pp. 133–34, supports the court's conclusion that the term "visibly" must be construed in its full literal sense:

> Headnote 2 of subpart C defines the terms "coated or filled" and "nonwoven fabrics". *The definition of "coated or filled" makes an important distinction between textile fabrics on the basis of the surface character thereof.* Most fabrics advanced beyond the grey state have been bleached or colored. *Some of these products may also have been treated for the purpose of rendering them more able to withstand water, or to repel fire, insects, rodents, mildew, or rot. All of these purposes may be accomplished by treatments which do not visibly or significantly affect the surface or surfaces of the fabrics.* The bleaching agent, dye, or other processing material is absorbed into the fibers with only an observable tendency to change their coloration. *None of such products are embraced within the coated or filled classes of fabrics which are included in this subpart. The fabrics in this subpart must have been coated or filled* (whether or not impregnation occurs) with gums, starches, pastes, clays, plastics materials, rubber, flock, or other substances "*so as to visibly and significantly affect the surface or surfaces thereof* otherwise than by change in color, whether or not the color has been changed thereby".
>
> The existing tariff provisions with respect to coated or filled fabrics are fragmentary and poorly arranged. Included among them but not specifically designated as a coated or filled fabric, is "waterproof cloth, wholly or in chief value of cotton or other vegetable fiber, whether or not in part of India rubber" in paragraph 907. The provision for waterproof cloth has been controversial over the years. It has been interpreted as including certain fabrics which are not coated or filled within the meaning ascribed to that term in this subpart (CAD 723). *The effect of the court ruling holding so-called water-repellent fabrics to be within this provision in paragraph 907 has been carefully studied, and it does not seem desirable or feasible to establish a classification for fabrics on the basis of water repellency unassociated with a coating or filling concept.* The provisions for waterproof cloth, therefore, have been assimilated with the coated or filled fabrics in item 355.65. [Emphasis added.]

In addition, the intent of the drafters of the proposed revised tariff schedules in preparing headnote 2(a) was clearly explained by Mr. Russell N. Shewmaker, then assistant general counsel of the Tariff Commission, during the hearing held on June 3, 1958, before the Tariff Commission on schedule 3 of the proposed schedules. The following exchange occurred during the testimony of Mr. Howard Richmond who represented a domestic trade association (*Tariff Classification Study*, Schedule 3, November 15, 1960, p. 350):

MR. SHEWMAKER. We are trying to clarify this. We are not trying to anticipate the decision. We don't pretend to be clairvoyant either in that respect. But we are attempting to get meaningful distinctions set forth which would avoid questions being raised concerning the tariff status of these fabrics which have been merely treated for water repellancy, and so on. As we visualize fabrics, there are any number of things that might be done to them without changing their textile character. They might be colored or printed or maybe treated for mildew.

MR. RICHMOND. I was particularly disturbed by resin treated fabrics which are becoming more and more popular and I was worried as to whether resin treated fabrics could not fall under this definition [headnote 2(a)] that you currently may have.

MR. SHEWMAKER. When you say resin treated—

MR. RICHMOND. For crease resistance or one thing or another that don't materially affect the appearance of the fabric but it definitely is a resin substance.

MR. SHEWMAKER. *Well, if it doesn't affect the appearance, we wouldn't regard it under this definition as being within this provision so far as the coated or impregnated is concerned.*

COMMISSIONER SCHREIBER. Mr. Shewmaker, you say we would not regard it. Now, who is the "we"? The Tariff Commission or the Customs Bureau?

MR. SHEWMAKER. Well, when I say "we," I am talking about the intention of those of us who are working with drafting the language of the revised schedules. It was not our intention to catch within the provision for "coated or impregnated" fabrics something which had merely been immersed in a solution and made resistant to mildew or treated for fire resistance or rot or for other purposes. As long as the treatment didn't leave a coating or a filling over the surface of the fabric and in effect give you a coated fabric, of an entirely different character, let us say, to the pile fabric on which it was used, then the term "coated or impregnated" as we prepared this definition was not intended to embrace that. [Emphasis added.]

In conclusion, since we find that the merchandise in issue is not "coated" within the meaning of headnote 2(a), the claim for classification under item 356.25 is overruled. Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *May 21, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/549	Rao, J. May 15, 1973	Gene Miller	70/23628, etc.	Item 646.92 14% or 12%	Item 692.27 6.5% or 5.5%	Judgment on the pleadings	Los Angeles-Long Beach Wheel lock sets
P73/550	Rao, J. May 16, 1973	Cohn Hall Marx Co., Div. of United Merchants & Mfrs., Inc., et al.	64/8363, etc.	Par. 904(c) 16½% or 16¼%	Par. 907 11%	Rohner, Gehrig & Co. et al. v. U.S. (C.D. 4039)	New York Water-repellent cotton suede cloth

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/551	Watson, J. May 16, 1973	Consolidated Novelty Co., Inc., et al.	67/55929, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Los Angeles Artificial flowers, etc.
P73/552	Watson, J. May 16, 1973	Morris Friedman & Co. et al.	69/9145, etc.	Item 748.20 28% or 26.5%	Item 774.60 17% or 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Philadelphia Artificial flowers, etc.
P73/553	Watson, J. May 16, 1973	S. S. Kresge Co. et al.	67/70992, etc.	Item 748.20 28%, 26.5% and 25%	Item 774.60 17%, 15% and 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P73/554	Watson, J. May 16, 1973	S. H. Kress & Co. et al.	67/70996, etc.	Item 748.20 28%, 26.5% and 25%	Item 774.60 17%, 15% and 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P73/555	Watson, J. May 16, 1973	Novelty Wreath Co.	67/6414, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	Philadelphia Artificial flowers, etc.

P73/556	Watson, J. May 16, 1973	Regency Flowers, Inc., et al.	67/19579, etc.	Item 748.20 28% and 25%	Item 774.60 17% and 13.5%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P73/557	Watson, J. May 16, 1973	F. W. Woolworth Co. et al.	67/5905, etc.	Item 748.20 28%, 26.5% and 25% (items marked "A") Item 748.20 28% (items marked "B")	Item 774.60 17%, 15% and 13.5% (items marked "A") Item 772.15 17% (items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zunold Trading Corporation et al. v. U.S. (C.D. 3279) (items marked "A") Agreed statement of facts (items marked "B")	New York Artificial flowers, etc. (items marked "A") Curtain hooks, chiefly used in household (items marked "B")
P73/558	Watson, J. May 16, 1973	F. W. Woolworth Co.	67/70021	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Baltimore Artificial flowers, etc.
P73/559	Watson, J. May 16, 1973	Zunold Trading Corp.	68/28869	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Mobile Artificial flowers, etc.
P73/560	Maletz, J. May 16, 1973	American Laubscher Corp.	67/42573, etc.	Item 720.94 32.5%	Item 680.45 9%	American Laubscher Corp. et al. v. U.S. (C.D. 4006)	New York Pinions and gears, and assemblies therof
P73/561	Maletz, J. May 16, 1973	Mattel, Inc.	71-10-01227	Item 740.38 44%	Item 737.90 28%	Agreed statement of facts	Los Angeles Locket portions of "Lucky Locket Kiddles" toys and the plastic housing portions of "Jewelry Kiddles" toys

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P72/562	Maletz, J. May 16, 1973	Mattel, Inc.	72-6-01427	Item 740.38 49%	Item 737.90 31%	Agreed statement of facts	Los Angeles Locket portions of "Lucky Locket Kiddles" toys and plastic housing portions of "Jewelry Kiddles" toys
I'73/563	Re, J. May 16, 1973	Manton Cork Corp.	70/65378, etc.	Item 220.50 36%, 32%, 28.5% and 25%	Item 731.60 22%, 20% and 17%	Manton Cork Corp. v. U.S. (C.D. 4084)	New York Natural cork balls, cork balls or floats

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/151	Re, J. May 14, 1973	Atkins, Kroll & Co. et al.	296758-A, etc.	Export value: Net appraised value less 7¼%, net packed.	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood

Decisions of the United States Customs Court

Abstracts

Abstracted Valuation Decision on Remand from Protest Proceedings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	PROTEST NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
V73/7	Re, J. May 14, 1973	Plywood & Door, Southern Corporation	62/19088 and 62/19089 (C.D. 2800	Export value: Unit value indicated on entry papers in red ink, less invoiced ocean freight and insurance, prorated	Not stated	Plywood & Door, Northern Corporation v. U.S. (R.D. 18063)	Houston Birch plywood

Judgment of the United States Customs Court in Appealed Case

MAY 17, 1973

APPEAL 5413.—United States *v.* Baylis Brothers Co.—SMOCKED DRESS FRONTS—"OTHER WOMEN'S, GIRLS', OR INFANTS' APPAREL, ORNAMENTED"—AMERICAN GOODS RETURNED—TSUS.—C.D. 3987 affirmed November 11, 1971, C.A.D. 1026. C.A.D. 1026 was modified on March 20, 1973, and the appeal was remanded to the Customs Court for appropriate relief. This judgment is in conformity with mandate of the Court of Customs and Patent Appeals issued on March 21, 1973.

Appeals to United States Court of Customs and Patent Appeals

APPEAL 5537.—Rachelle Laboratories, Inc. *v.* United States.—CHEMICALS (LEVO BASE), REAPPRAISEMENT OF—AMERICAN SELLING PRICE—EXPORT VALUE.

Merchandise consisting of a chemical commonly referred to as "levo base" was advanced in value under appraisement based on American selling price as defined in 19 U.S.C.A., section 1401a(e) (section 402 (e), Tariff Act of 1930, as amended) to $150 per kilo, net packed. Plaintiff-appellant claimed that there was no American selling price or United States value for the imported levo base and that export value as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended) was the proper basis for determining the value of the merchandise and that the export value of the levo base was $25 per kilo, net packed. The Government's motion to dismiss for failure of proof, made at the conclusion of the importer's case, was granted. It is claimed that the Customs Court erred in granting the motion to dismiss the appeals for reappraisement and complaint for failure of proof made by defendant-appellee; in failing to sustain the claim in the appeals for reappraisement and complaint that the proper basis of appraisement for the merchandise involved herein is export value, *supra;* in failing to consider the record as a whole in rendering judgment for the defendant below; in failing to render judgment for plaintiff below; in failing to hold that there was no price that Parke Davis & Company, the only domestic producer or owner of like or similar merchandise as that involved herein, would have received for said domestic product for domestic consumption in the ordinary course of trade at the time of exportation of the merchandise involved herein; in failing to hold that there was no price that Parke Davis & Company was willing to receive for any domestic product like or similar to the merchandise

involved herein for domestic consumption in the ordinary course of trade at the time of exportation of said merchandise; and in refusing to admit in evidence as an admission against interest a letter dated June 24, 1968 from Austin Smith, M.D., then president and chairman of the board of Parke, Davis & Company to Warren T. White Jr., then the executive vice president of appellant wherein Mr. Smith states that it is impractical for Parke-Davis to respond to a request from Mr. White for Parke-Davis to sell chloramphenical in bulk to appellant. Appeal from C.D. 4416.

APPEAL 5538.—E. Dillingham, Inc. *v.* United States.—FEMALE DAIRY CATTLE ("HEIFERS")—CATTLE, OTHER—COWS IMPORTED FOR DAIRY PURPOSES—TSUS.

Certain heifers, pregnant with first calf at the time of importation, were held properly assessed with duty at the rate of 1.5 cents per pound under item 100.53, Tariff Schedules of the United States, as "Cattle * * * Other". Plaintiff claimed that the animals were subject to duty at 1 cent per pound under item 100.50 as "cows imported specially for dairy purposes". It is claimed that the Customs Court erred in overruling the claim for classification of the imported female dairy cattle under item 100.50, *supra;* in not defining the first issue involved as whether or not a young cow also known as a heifer is a cow for purposes of TSUS item 100.50; in holding the second issue involved, i.e., were the animals imported specially for dairy purposes, moot; in not finding and holding that headnote 2, part 1, schedule 1, TSUS, applied to TSUS item 100.50 and provided for young cows as well as mature cows; in finding and holding that headnote 2, *supra*, does not apply to item 100.50; and in not finding and holding that long established principles of customs law, to the effect that an *eo nomine* designation includes all forms of the article named, required classification of the imported animals under item 100.50. Appeal from C.D. 4420.

Application for Writ of Certiorari to Supreme Court

MAY 1, 1973

APPEAL 5496.—Matsushita Electric Industrial Co., Ltd., et al. *v.* United States Treasury Department et al.—ANTIDUMPING ACT—ALL WRITS ACT—SUMMONS AND CIVIL ACTION DISMISSED FOR LACK OF JURISDICTION.—C.D. 4292 affirmed February 1, 1973. C.A.D. 1086. Sup. Ct. No. 72-1479. Application by appellants.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *May 31, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA-I-28]

FERROCHROMIUM, FERROMANGANESE, FERROSILICON, FERROSILICON CHROMIUM, FERROSILICON MANGANESE, CHROMIUM, MANGANESE AND SILICON

Investigation and hearing

Investigation instituted. Following receipt of a petition filed by the Ferroalloys Association on behalf of its member companies, the U.S. Tariff Commission, on May 21, 1973, instituted an investigation under section 301(b)(1) of the Trade Expansion Act of 1962 to determine whether—

> ferrochromium, ferromanganese, ferrosilicon, ferrosilicon chromium, ferrosilicon manganese, chromium metal, manganese metal and silicon metal of the types provided for in items 607.30, 607.31, 607.35 to 607.37, inclusive, 607.50 to 607.53, inclusive, 607.55, 607.57, 632.18, 632.32 and 632.42 of the Tariff Schedules of the United States

are, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry or industries producing like or directly competitive products.

Public hearing ordered. A public hearing in connection with this investigation will be held beginning at 10 a.m., E.D.S.T., Tuesday, August 7, 1973, in the Hearing Room, U.S. Tariff Commission Building, Eighth and E Streets, N.W., Washington, D.C. Requests for appearances at the hearing should be received by the Secretary of the

Tariff Commission, in writing, at his office in Washington, D.C., not later than noon, Thursday, August 2, 1973.

Inspection of petition. The petition filed in this case is available for inspection by persons concerned at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 22, 1973.

[TEA-W-198]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and former workers of Regina Footwear, Inc., Brooklyn, New York, the United States Tariff Commission, on May 22, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20, 700.43, 700.45, and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 22, 1973.

[TEA-W-199]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and the former workers of the Rola-Pemcor plant, Warrensville Heights, Ohio, of Pemcor, Inc., Westchester, Illinois, the United States Tariff Commission, on May 21, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with television yokes (of the type provided for in item 685.20 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register*.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 22, 1973.

[AA1921-120]

CERAMIC GLAZED WALL TILE

Notice of investigation and hearing

Having received advice from the Treasury Department on May 11, 1973, that ceramic glazed wall tile from the Philippines is being, or is likely to be, sold at less than fair value, the United States Tariff Commission on May 22, 1973, instituted investigation No. AA1921-121 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United

States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10:00 a.m., E.D.S.T., on Tuesday, June 19, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, June 14, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 22, 1973.

[AA1921–121]

ALUMINUM INGOTS

Notice of investigation and hearing

Having received advice from the Treasury Department on May 15, 1973, that aluminum ingots from Canada are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on May 23, 1973, instituted investigation No. AA1921–121 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10:00 a.m., E.D.S.T., on Tuesday, June 26, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, June 21, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 23, 1973.

[TEA-W-200]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Erving Shoe Company, Inc., Lowell, Massachusetts, the United States Tariff Commission, on May 23, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20, 700.43, 700.45, and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 23, 1973.

[TEA-W-201]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Winchell Shoe Co., Inc., Natick, Massachusetts, the United States Tariff Commission, on May 25, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly

competitive with footwear for men (of the types provided for in items 700.26, 700.27, 700.29, and 700.35 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register*.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued May 25, 1973.

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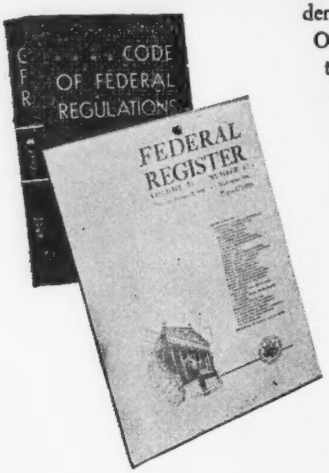

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